UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH
DIVISION OF JUDGES

AUDIO VISUAL SERVICES GROUP, INC.
d/b/a PSAV PRESENTATION SERVICES

and **Cases 19–CA–186007**
19-CA- 192068

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES,
LOCAL 15

Ryan Connolly, Esq. & Patrick Berzai, Esq.,
for the General Counsel.
David Shankman, Esq. & Michael Willats, Esq.
(Shankman Leone, P.A.),
for the Respondent.
Katelyn M. Sypher, Esq.
(Schwerin Campbell Barnard Iglitzin & Lavitt, LLP),
for the Charging Party.

DECISION

Statement of the Case

GERALD M. ETCHINGHAM, Administrative Law Judge. International Alliance of Theatrical Stage Employees (IATSE), Local 15 (Charging Party or Union or Local 15), filed the original charge in this case on October 11, 2016,[1] and a second charge was filed on January 27, 2017. The General Counsel issued the complaint on May 24, 2017 (complaint), and the Respondent Audio Visual Services Group, Inc. doing business as PSAV Presentation Services (Respondent or PSAV) answered the complaint on June 7, 2017, basically denying the material complaint allegations.

This case involves allegations that Respondent: (1) failed to provide relevant financial information after expressing an inability to pay the Union's proposed wage increases for a first collective-bargaining agreement (CBA); and (2) committed other bad acts that constitute bad faith bargaining in violation of Section 8(a)(5) and (1) of the Act. Respondent denies the

[1] All dates are 2016 unless otherwise indicated.

essential allegations in the complaint and argues that at all times relevant, Respondent bargained in good faith with the Union.

This case was tried in Seattle, Washington, on August 8 and 9, 2017. Closing briefs were submitted by the General Counsel, the Charging Party, and the Respondent on October 13, 2017.[2] On the entire record,[3] including my observation of the demeanor of the witnesses, and after considering the closing briefs,[4] I make the following

FINDINGS OF FACTS

I. JURISDICTION

The Respondent is a State of Delaware corporation with offices and places of business in Tukwila, Seattle, Sea-Tac, Bellevue, and Tacoma, Washington, and Philadelphia, Pennsylvania, where it is engaged in the business of providing event technology services at hotels and conference centers. In conducting its operations during the 12- month period preceding issuance of the complaint, which period is representative of all material times, the Respondent received gross revenue in excess of $500,000, and purchased and received at its facilities located within the State of Washington goods valued in excess of $50,000 directly from points outside the State of Washington. I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. INTRODUCTION

The Respondent provides technology nationwide for events, within hotels and conference centers. The Union represents riggers and technicians employed by PSAV.[5] PSAV's riggers and technicians are responsible for the set-up and breakdown of audio and visual equipment used for presentations in client hotels and conference centers—riggers work with scaffolding and attached

[2] The Charging Party also submitted a "corrected" closing brief on October 16, 2017, which no party has raised any objection to and, therefore, I accept as the Charging Party Union's closing brief.

[3] The transcript in this case (Tr.) is mostly accurate, but I correct it as follows: Tr. 2 and 161; line (l) 7: "Employer Rhino Northwest" should be "Employer Audio Services Group, Inc." or "PSAV"; Tr. 90; l 2: "prentices" should be "proposals"; Tr. 90, l. 7: "call" should be "hall"; Tr. 172–173: "CVA" should be "CBA".

[4] Abbreviations used in this decision are as follows: "Tr." for transcript; "R. Exh." for Respondent's exhibit; "GC Exh." for General Counsel's exhibit; "Jt. Exh." for joint exhibit; "GC Br." for the General Counsel's closing brief, "CP Br. For the Charging Party's closing brief; and "R. Br." for the Respondent's closing brief. Although I have included numerous citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

[5] Rigger CBA's are different than technician CBAs. This case does not involve rigger employees although the Union and Respondent were negotiating *rigger* CBA's at the same time they were negotiating a first *technician* CBA.

devices while technicians work with the operation, transportation, maintenance, and repair of equipment. (Tr. 76–77.)

B. CERTIFICATION

The Union was certified as the exclusive bargaining representative on December 18, 2015[6], as the exclusive collective-bargaining representative of the employees in the following unit:

> All full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the Union's national agreement with the Employer, and guards and supervisors as defined by the Act.

On January 4, 2016, the Respondent filed with the Board in Washington, D.C., a request for review of both the Decision and Direction of Election and the Decision on Challenges and Objection and Certification of Representative. On May 19, 2016, the Board denied the Respondent's request for review (the Board's May 19 Denial).[7]

PSAV refused to bargain with the Union from January 4, 2016, until after the Board issued the Board's May 19 Denial.

Pursuant to a charge filed on January 7, 2016, the General Counsel issued a complaint and notice of hearing on June 23, 2016, alleging that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union from January 4 to May 23, 2016, following the Union's certification in Case 19–RC–161471.[8]

On May 23, 2016, following the resolution of Case 19–RC–161471, PSAV purportedly began its efforts to bargain. (See Jt. Exh. 1.)

The parties met for their first bargaining session on June 24, 2016, at the Edgewater Hotel in Seattle and then for their second and third sessions on August 17 and 18, 2016. A fourth

[6] The representation elections were held by mail ballot from November 9, 2015, to November 30, 2015, and the Region 19 Regional Director issued a Decision on Challenges and Objection and Certification of Representative in Case 19–RC–161471.

[7] Respondent's Shankman admits that PSAV did not begin good-faith bargaining negotiations with the Union until late May 2016 because PSAV objected to the November 2015 election. Tr. 166–167; Jt. Exh. "1."

[8] On February 12, 2016, Region 19 General Counsel informed the bargaining teams for PSAV and the Union that the unfair labor practice (ULP) Case 19–CA–167454 was "being held in abeyance [by Region 19] pending the Board's ruling on the [PSAV's] request for review in Case 19–RC–167141." (R. Exh. 7.) Despite the General Counsel's deferment of an investigation into the Union's alleged ULP against the Respondent, I find that the Respondent made its own separate business decision not to bargain with the Union from January 4 through May 23, 2016, accepting all associated risks for this conduct.

bargaining session was held on September 19, 2016, and then finally a fifth one on January 24, 2017.

The bargaining team for the Union was comprised of the union local business representative Mylor Treneer (Treneer), the Union's assistant business representative, Aaron Gorseth (Gorseth), and Union Attorney Katelyn Sypher (Sypher). The Respondent was represented at the bargaining sessions by attorneys David S. Shankman[9] (Shankman) and Michael R. Willats (Willats), and at some sessions also by Manager Jason Younce (Younce), VP John Riggi (Riggi), and Manager Laura Brassington (Brassington). (Tr. 78, 88.)

C. STRUCTURE OF REPRESENTATION AND RESPONDENT'S FIRST UNLAWFUL FAILURE AND REFUSAL TO BARGAIN WITH THE UNION FROM JANUARY 4 TO MAY 23, 2016

The Union's relationship with the Respondent includes multiple collective-bargaining contracts (CBAs). In Washington, there is a rigging contract and the parties have been working on an initial technicians' contract since the November 2015 election. (Tr. 75.) Riggers operate differently than those in other bargaining units. PSAV employs riggers who have their own call-list. Treneer was the business agent of Local 15 who was responsible for both the riggers and technicians' CBAs. He was approached by workers who had been gathering cards and he provided them with assistance in completing the organizing drive.

As stated above, the Union won representation in late 2015 which was appealed by PSAV, and PSAV decided not to bargain with the Union during the pendency of the appeal until approximately May 24, 2016.[10] On May 19, 2017, ruling on a motion for summary judgment in Case 19–CA–167454, *the First PSAV case*, the Board found PSAV in violation of Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union from January 4 to May 23, 2016.[11]

The International Union and the Respondent also have CBAs with large city technicians who work on an as-needed or on-call basis in cities such as San Diego (SD) and San Francisco (SF) where events come about unexpectedly and require the Respondent to staff these pop-up events with these on-call employees.

D. JUNE 24 SESSION AND EVENTS ON JULY 19 AND AFTERWARDS

As far as the June 24 bargaining session is concerned, the parties largely discussed the successor rigger CBA and only ground rules were set for the technician's initial CBA negotiations. After this bargaining session, PSAV provided the Union at its request, the current wage rates that were being paid by PSAV to the bargaining unit members in Seattle, Sea-Tac,

[9] Shankman has been a lawyer representing Respondent PSAV since 2000 and has negotiated CBA's for PSAV nationwide. Tr. 165. Treneer has been involved in the live events business since 1978 and has negotiated CBAs since 1980. Tr. 74.

[10] See Cases 19–RC–161471 and 19–CA–167454 and *Audio Visual Services Group, Inc.*, 365 NLRB No. 84 (May 19, 2017) (otherwise referred to as *the First PSAV case*).

[11] *The First PSAV case*, slip op. at 3.

Belleview, Tukwila, and Tacoma, WA (Respondent's status quo wages). (Tr. 168–169; R. Exhs. 1 and 2.)

The Union's first proposed CBA to PSAV in June was comprised of the Union's typical "scaffold agreement" that the Union and Treneer used in other CBAs over the years as a guide before adding the specific wage provisions contained in its next version. (Tr. 78–79, 83, 170; Jt. Exhs. 3–4.)

Article "H" in the Union's proposed CBA to PSAV is a draft provision referring to one-hour increments which is common in the Union's CBA's and basically says that if a worker works 15 minutes into an hour, they get paid for a full hour. (Tr. 79–80; Jt. Exh. 3.) The next provision in the Union's proposed CBA refers to if a technician works a 12-hour shift, they get paid time-and-a-half after 8 hours and the proposed language prevents PSAV from bringing in a whole new crew for the last 4 hours to avoid paying overtime. (Tr. 80; Jt. Exh. 3.) Both of these proposed sections would have changed the existing status quo wage conditions at PSAV. (Tr. 79–80.)

Article "Q" in the Union's proposed CBA to PSAV refers to "dismissal for cause" and the Union was seeking a change to PSAV's status quo treatment of its employees to language that also was common in the Union's prior CBA's requiring there to be "just cause" and a progressive discipline policy once "just cause" for discipline had been evoked. (Tr. 81; Jt. Exh. 3.)

Article "R" in the Union's proposed CBA to PSAV involves "grievance and arbitration" language which was, once again, standard language in the Union's prior CBA's, and describes the grievance process, the timeline of the process and how step grievances get resolved up until arbitration. (Tr. 81; (Jt. Exh. 3.) These provisions were proposed changes to the status quo of PSAV's current terms and conditions with its employees. (See PSAV's employee handbook; Tr. 84–85; GC Exh. 2.)

The Union also proposed in June that since it already had a rigger CBA with PSAV, the Union was negotiating the initial technicians' CBA, and there was already a CBA between the International Union and PSAV for the same region, the Union suggested that all 3 CBA's be combined into one so that only one CBA would need administering in place of 3 separate CBA's. (Tr. 82.) PSAV responded that it was not interested in combining the 3 CBA's into one CBA. Id.

PSAV submitted no CBA proposals at the June bargaining session. (Tr. 82–83.) Instead, PSAV spent its time during the session asking the Union questions about the Union's proposals and being disappointed with the Union for not bringing a full draft contract for PSAV to review. (Tr. 81–83.)

There was a marked uptick in the Union's demand for wages, as represented in the Union's first full CBA proposal sent by the Union to PSAV on July 19. The Union proposal was to have increased wages ranging from $33 to $45 to for a variety of classifications, for example, a technician, who was currently earning between $15 to $18.54 an hour, would be increased to a

wage of $33 an hour (the Union's July 19 increased wage proposal). (Tr. 83–84, 169–170; Jt. Exh. 4; R. Exh. 2.)

The Union's July 19 increased wage proposal was anywhere from 73 percent to 120 percent higher than the Respondent's status quo wages and it is distinguished from its earlier June CBA proposal with red-lined additions. (Tr. 83–86, 170–171; Jt. Exhs 3–4; R. Exh. 8.) The Union's July 19 increased wage proposal was created by Treneer, the union bargaining unit contract committee, and the Local's president by reviewing a number of factors such as market rates in the Seattle area and wage rates from other west coast IATSE Locals' CBAs, including agreements with PSAV for its workers in cities like SD and SF. (Tr. 28, 86.)

Respondent's CBA with SF technicians IATSE Local 16, a 27 page agreement, provides that from July 1, 2016 through June 30, 2017, the Respondent pays SF technicians a wage rate that ranged from $32.88 to $93.58. (R. Exh. 11 at p. 17.) Respondent's CBA with SD technicians IATSE Local 122, a 12 page agreement, provides that on May 15, 2015, the Respondent pays SD technicians a wage rate that ranged from $26.89 to $39.21. (R. Exh. 13 at p. 5.)

On August 10, before the next bargaining session, PSAV sent its first counter-proposal with changes marked over to the Union with no proposed wage rates. (Tr. 86–87; Jt. Exh. 5.)

On August 11, PSAV sends the Union an updated and more complete version of the August 10 counter-proposal. (Tr. 87; Jt. Exh. 6.) The Respondent's revised proposal included a wage breakdown of its own which did not offer any change to Respondent's current status quo wages referenced above. (Tr. 172; Jt. Exh. 6 at 14; R. Exh. 2.)

PSAV also proposed a broad management rights clause, retaining "sole discretion" not only over customary management rights, but also over "discipline and discharge" and "subcontract[ing] work where deemed necessary [by PSAV] for the business." (Jt. Exh. 6 at Art. II.)

PSAV also proposed a grievance and arbitration policy that placed numerous limitations on what could be grieved, excluding "any complaints related to … [a]ny discipline that does not involve the loss of time or pay; …[a]ny employee grievance where there is no personal relief to the grievant; … [a]llegations of discrimination …; …[u]nfair labor practice charge[s]." (Jt. Exh 6. At Art. XIX.) PSAV also rejected the Union's proposal for a "final and binding" arbitration. Id.

E. AUGUST 17 AND 18 SESSIONS

The parties next met on August 17 and 18, with the morning of the first day again primarily devoted to the successor rigger unit bargaining. Also present at this meeting for PSAV besides Shankman were Willats, Younce, Rissi, and Brassington. (Tr. 88.)

In the afternoon of the August 17 session, the parties discussed various technician proposals, including economic proposals. Shankman especially did not agree with the Union's July 19 increased wage proposal and he commented to the Union bargaining team in a

condescending and dismissive tone that any Respondent agreement with the Union's July 19 increased wage proposal would be financial suicide for the Respondent and drive it underwater. (Tr. 29–30, 89–90.)

Specifically on August 17, Treneer attempted to make an opening statement in order to share feedback that he had received from bargaining unit members regarding PSAV's August 11 proposed CBA with status quo wages. (Tr. 89.) Treneer told the group that Union members were "quite disappointed" with PSAV's unchanged "business as usual" August 11 CBA proposal because the union members had some expectation, perhaps from conversations with PSAV management prior to the November 2015 election vote, that PSAV was going to increase employee wages from the status quo and address some of the union members' concerns. Id.

PSAV's chief negotiator, Shankman, then cut Treneer off and went into a fairly lengthy harangue or lecture about the Union's July 19 increased wage proposal and also about a Facebook posting that had gone up on the Union's bargaining unit's Facebook page. (Tr. 89.)

Shankman also accused Treneer of being "delusional" and Shankman alleged that Treneer was fraudulently misleading his bargaining unit. (Tr. 29–30, 34, 89–90.)

Shankman then made a number of factual assertions in support of this statements, including that PSAV paid 50 percent commissions to their Seattle hotel and convention center properties on all their labor and event rentals and that the market in Seattle could simply not support the wage rates proposed by the Union in its July 19 increased wage proposal. (Tr. 89–90.)

Shankman continued his vehement and lengthy rebuke to the Union bargaining team on August 17 arguing that Respondent's revenue contracts with the Seattle properties were "nonexclusive" and "precarious." (Tr. 31–32, 34, 90–91, 151, 153.) Shankman then argued to Treneer that acceding to the increased wage rates asked for by the Union "would be suicide" for PSAV and "would cause them [Respondent] to lose hotel properties." (Tr. 29, 30–31, 34, 89–91.) Shankman concluded by repeating that PSAV was not rejecting these proposed Union wage rates out of stubbornness, but if Respondent accepted them, "the company would be underwater." Id.

The Union's response to PSAV's inability to pay statements on August 17 was to say that Shankman "can expect a request for information based on that information that you [Shankman] provided us [the Union]." (Tr. 35, 89–91.) [12]

[12] I reject the findings of the purported Mercer study, R. Exh. 15, because the study post-dates the initial economic proposal by five months and I find Treneer's confident testimony as to what Shankman said on August 17 confirmed by Gorseth and more believable than Shankman's version of what was said at the August 17 bargaining session as Treneer and Gorseth recalled key conversations at ease at hearing while Shankman testified quickly with what appeared to be less reliable scripted testimony. Moreover, despite Willats, Younce, Rissi, and Brassington all being present at the August 17 and 18 bargaining sessions for PSAV with Shankman, none of them testified at hearing about what Shankman said or did not say on August 17. In addition, The Union's version of facts is more consistent with the rest of the record including the nonmovement from Respondent's status quo positions at negotiation sessions and in general from November 2015 through August 18, 2016, and thereafter. See Tr. 192–193; Jt. Exhs. 4–11, 13–17.

Treneer opined that Shankman was basically telling him and the other Union representatives that the Union was comparing apples to oranges and the wage rates in SD and SF were for intermittent hiring hall dispatch labor from the relevant IATSE Locals instead of retaining full-time or part-time employees on standby as PSAV did in Seattle. (Tr. 31–32, 34, 90–91.) In fact, Treneer explains that the Union's proposed increased wage rates; instead, were "built not only on these [SD and SF] wages but also wages paid in Seattle locally by PSAV to contractors." Id.

The Union was further notified during the bargaining session by Attorney Shankman that PSAV employs a regular work force within hotels to do both billable and nonbillable work. Gorseth further opined that he was aware of the distinction between the two groups because bargaining unit employees can perform both billable and nonbillable work.

Treneer's specific response during the August 17 bargaining session was to let Shankman know that Respondent should expect a request for financial information related to the Union's July 19 increased wage proposal based on Shankman's response that: (1) the Union's proposed wage increases would make Respondent financially bankrupt; (2) Respondent pays 50 percent commissions to Seattle hotel convention center clients; and (3) Respondent's current client contracts are non-exclusive and precarious. Treneer also admits that the Union informed the Respondent that Respondent's wage proposal simply maintains the status quo with no increases to Respondent's unit employees' wages. (Tr. 35, 89–91.)

On the discussion of wages and overtime, PSAV's August 11 counter proposal deleted most of the language inserted by the Union, and instead inserted language that indicated that they would pay rates consistent with the Fair Labor Standards Act (FLSA) provisions and the overtime laws of the State of Washington. Minor changes were also proposed by PSAV to the articles concerning discipline, recognition, management rights, grievance and arbitration, wages and overtime, among others with PSAV basically maintaining its unchanged status quo language in all these provisions from earlier proposals.[13] (Tr. 91–95; Jt. Exh. 6 vs. Jt. Exhs 7–9.)

At the August 18 bargaining session, a second union counterproposal to Respondent's status quo wages was then made by the Union. (Tr. 95; Jt. Exh. 9 at Art. J.) This second union counterproposal, on average, decreased the Union's July 19 increased wage rates by $2 an hour across the board. (Tr. 116; Jt. Exh. 9.)

As stated above, the Union's revised wage rates were, on average, a $2 decrease in hourly wages across the board from its initial July 19 proposal through all 4 tiers and still represented a range of 64 percent to 106 percent of an increase from the unit technicians' then-current hourly wage rates. The Union's second counterproposal also withdrew some overtime pay provisions that were in the Union's first July 19 increased wage proposal. (Tr. 95 and 97; Jt. Exh. 9; R. Exh. 14.)

[13] Treneer pointed out overtime paid by PSAV to union employees in California and Shankman rejected it for the Union in this case not for financial reasons but, instead, saying that the provision is mandated by CA state law but not by WA state law. Tr. 93.

Outside of wages, the parties also discussed other topics during this session. (See Jt. Exhs. 7 and 8 for other proposals the Union made.) The Union also moved toward PSAV's position on overtime pay, removing 2 conditions that would trigger overtime pay from its proposal. (Jt. Exh. 9 at Art. K.) The Union further came back from its July 19 proposed CBA and offered additional changes to the recognition and discipline provisions signaling a willingness to work with PSAV in order to get an initial CBA but which PSAV never provided a counteroffer in response. (Tr. 96–97; Jt. Exh. 7, and Jt. Exh. 8.) Some of the issues were deferred for a later bargaining session. No counteroffers from Respondent were made at this point, but an agreement to meet again in September was established.

F. THE UNION'S SEPTEMBER 2 REQUEST FOR INFORMATION TO PSAV

Thereafter on September 2, via email from Sypher to Shankman, the Union followed up on Treneer's oral request on August 17 and asked PSAV for financial information about the Respondent, copies of its contracts with various properties in Seattle, and documents showing the rates they charge to event clients, seeking to see if the Respondent could substantiate its claims about its inability to pay the Union's proposed increased wages. (Jt. Exh. 10 at 2.)

The September 2 Union request for information specifically provides:

> Dear David [Shankman]:
>
> We write with respect to your remarks on PSAV's economic position at the parties' most recent bargaining session [on Aug. 17]. To further the parties' negotiations, Local 15 would like to better understand PSAV's financial position.
>
> At the session, you expressed PSAV's inability to pay the wages requested by the tech bargaining unit in strong terms, stating both that Local 15's wage proposal "would put [PSAV] underwater" and "would be suicide for [the] company." You also connected the company's inability to pay the wages requested both with the commissions that it pays back to its hotel property clients and the rates it charges for its services to event clients, stating that "50% of our revenue, roughly, goes to commissions" to the hotel properties and that "the money [needed pay [siq.] the wages requested] isn't there based on the market rates that can be charged" for PSAV's event services to clients.
>
> Thus, Local 15 makes the following request for information from PSAV:
>
> - Documents sufficient to substantiate PSAV's claim of its inability to pay the requested wages; particularly, we request that the company provide documents that demonstrate the company's gross revenues, expenses, and profits for 2015 and 2016 to date (Bullet Pt. 1);
> - PSAV's current contracts with any and all of its hotel clients in Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma (Bullet Pt. 2);
> - If the contracts requested above don't expressly establish the commission rates and sums PSAV has paid to such property owners between January

1, 2015 and the present, documents that demonstrate that information (Bullet Pt. 3); and,

- Documents sufficient to show the rates charged to all event clients to whom PSAV has provided service in the cities listed above within the past year (September 1, 2015 to present) (Bullet Pt. 4).

(Tr. 98–101; Jt. Exh. 10 at 2.)

The Union requested this specific financial information from PSAV because of the direct relationship between the assertions made by Shankman at the bargaining table on August 17 about PSAV's financial position, the terms and nature of its contractual relationship with its clients, and the wage rates that PSAV in Seattle could or could not sustain based upon the rates PSAV charged. (Tr. 35, 99–101.)

The September 2 union request for information concludes with the Union informing PSAV that it is willing to enter into an appropriate confidentiality agreement to cover the requested documents and if the last bullet point "proves unduly cumbersome," the Union is willing to negotiate some representative sample of the requested documents that will meet the Local's need. (Jt. Exh. 10 at 2.)

G. PSAV'S SEPTEMBER 6 RESPONSE TO THE UNION'S SEPTEMBER 2 REQUEST AND ITS ATTEMPT TO RETRACT THE AUGUST 17 SESSION CONVERSATION

In response on September 6, Attorney Shankman sent an email to Treneer, Sypher and Respondent's attorney Willats, in which Shankman thanks the Union for its September 2 request and adds the following:

> However, it [the September 2 request] grossly misstates the context in which the statements [from Shankman at the August 17 bargaining session] were made. What I [Shankman] was explaining during our negotiations is that *no employer in this business would pay such a [n increased] wage [rate] to its hourly workforce that was so grossly outside of its business model [and] that if it did so, it would be suicide for the company.* This is not an inability to pay for lack of revenue. It's a refusal to pay an hourly rate that would be detrimental to the business. … [citations omitted.] No such claim of inability to pay was ever made.[14]

(Jt. Exh. 10 at 1.)(Emphasis added.)

[14] Treneer convincingly recalled that at no time during Shankman's August 17 lecture to the Union's negotiating team did Shankman ever say that "no employer" in this business would pay such a wage as proposed by the Union on July 19 because Shankman did not say this and because Treneer knows there are employers who pay those same wage rates proposed by the Union. Tr. 101–102. Moreover, Treneer and Gorseth both had clear recollections at hearing that Shankman did not state that "no employer" in the industry could or would be able to pay such wages, but instead, that Shankman was asserting that PSAV's company, specifically, would be bankrupted and unable to pay the Union's wage proposals. Tr. 31, 101–102. As a result, I reject as untrue Shankman's attempt to re-shape his statements from August 17 by adding the "no employer in this business" language to his September 6 email.

Shankman's September 6 email response to the Union's request for information also provides:

> The balance of your request (hotel contracts, commission rates and rates charged to end clients) is premised off of your inability to pay claim which we clearly did not assert. Indeed, and keep this in perspective (either for purposes of your request or the negotiations going forward), we shared with you the issue of commissions not to explain hardship or inability to pay wages. Rather, we shared this in the context of explaining why we can pay higher union-call rates for *billable* events vs. the rates being paid to PSAV's regular hourly employees for many hours which are not-billable. There was no connection between these circumstances other than that. Finally, to the extent this request would be made but not tied to the above-issues, we decline to provide this information as it is proprietary and confidential business information.

(Tr. 97–101; Jt. Exh. 10.)(Emphasis in original.)

At no time prior to the hearing, however, did Shankman or Respondent provide the Union with the Respondent's SD or SF CBAs or supply the Union with the requested wages paid in Seattle by PSAV to contractors to explain or clarify to the Union Shankman's distinction in wage rates paid by Respondent between the International Union's members working on an intermittent hiring hall dispatch labor basis and the unit employees here who work as billable and non-billable employees. (See Tr. 29, 31–32, 34, 90–91; R. Exhs. 9–11 and 13.) Once again, Respondent's CBA with SF technicians IATSE Local 16, a 27 page agreement, provides that from July 1, 2016 through June 30, 2017, the Respondent pays SF technicians a wage rate that ranged from $32.88 to $93.58. (R. Exh. 11 at p. 17.) Respondent's CBA with SD technicians IATSE Local 122, a 12 page agreement, provides that on May 15, 2015, the Respondent pays SF technicians a wage rate that ranged from $26.89 to $39.21. (R. Exh. 13 at p. 5.)

The Union never received any of the requested financial information from Respondent and the Respondent never proposed any change to its status quo wages in response to the Union's 2 economic counterproposals on July 19 and August 18.

H. SEPTEMBER 19 SESSION

Both parties drafted proposals and presented them during a third bargaining session in late September. PSAV's proposal did not include any changes to its then-current status quo wage rates it proposed maintaining nor to the discipline article. (Tr. 103–105; Jt. Exh. 11, Art. 9 and 18.) The Union's counterproposal did not include an updated wage provision to its two earlier wage proposals because they had already made two wage proposals to Respondent with no counterproposals offered by Respondent that increased wage rates from the status quo. (Tr. 103–105.)

The Union reasoned that this was because discussions of wages, including overtime, would be "shut down" at the bargaining session by Shankman under the vague justification that any changes to employee wages would apparently be contrary to Respondent's business model. (Tr. 105–106.) When the Union tried to ask PSAV financial questions that it

had put at issue during the prior bargaining session related to the rates PSAV charged for equipment and labor, PSAV continued to refuse to answer. (Tr. 105–106.)

I. OCTOBER 13 PSAV LETTER TO UNION TEAM AND ALL OF ITS MEMBERS AND ALLEGATIONS OF DIRECT DEALING

Shankman then sent an October 13 letter to Treneer and the entire technicians' bargaining unit, which disputes the basis of the Union's wage proposals and explicitly states that PSAV will not agree to the proposals, whether on wages or scheduling, and that PSAV is not "required to deviate from the business model that works throughout the Company." (Tr. 107; Jt. Exh. 13.)

PSAV sent over another proposed CBA ahead of a suggested November bargaining session that contained the same status quo language for job classifications and wages article, discipline, and grievance and arbitration articles. (Tr. 106–109; Jt. Exh. 14.)

J. JANUARY 26 SESSION AND THEREAFTER

In preparing for the next bargaining session, PSAV sent over another proposal. (Jt. Exh. 15.) The relevant article provisions in question once again did not change. Both sides canceled upcoming bargaining sessions in November and December so the next bargaining session did not take place until January 2017. (Jt. Exhs. 14–16.)

After some back-and-forth, the parties agreed to meet for another session of bargaining. The Union forwarded to the Respondent a counterproposal and the PSAV did the same. (Jt. Exhs. 16 (Union) and 17 (PSAV).) The Union's proposal did not include economic proposals for the reason that PSAV did not include any increased or changed economics in its latest proposal. (Tr. 112–113.) This session was brief, lasting less than 3 hours, and was only attended by Treneer, Sypher and Willats. (Tr. 109–110, 112.)

Some noneconomic tentative agreements (TA's) between the Union and PSAV were agreed to, however. The PSAV proposal did include some minor changes to the section on discipline. (Jt. Exh. 17, Art. 18.) This proposal also accepted certain non-material changes made by the Union to the grievance and arbitration section. (Tr. 111; Jt. Exh. 17 at 25.)

No further bargaining sessions occurred after the January 2017 session. (Tr. 114.) By this time, the Union had sent to PSAV two counter-proposals, Jt. Exh. 4 and Jt. Exh 9, which contained economic employee wage rate classifications and the unanswered September 2 request for financial information. After PSAV refused to provide the information requested since September 2, the Union was unable to formulate economic proposals, a position it communicated to PSAV. (Tr. 151–153; Jt. Exh. 10 at 3.) PSAV had proposed maintaining the status quo for all wage classifications for the bargaining unit technician's employees from January 2016 through and after the January 2017 bargaining session without any material compromise on wages, scheduling, discipline, management rights, or arbitration. (Tr. 108; R. Exh. 2, Jt. Exh. 6, Jt. Exh. 11, Jt. Exh. 14, Jt. Exh. 15, Jt. Exh. 16, and Jt. Exh. 17.)

On January 27, 2017, the Union filed a new unfair labor charge in Case 19–CA–192068 alleging that Respondent had failed to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act. (GC Exh. 1(c).)

K. SUMMARY OF NEGOTIATIONS

1. PSAV's Unchanged Economic Provisions

As part of the Union's July 19 increased wage proposal, the Union also sought to change the 8 existing wage classifications to a four-tier wage structure within the bargaining unit with wages ranging between $33 and $45 per hour. (Tr. 86; Jt. Exh. 4.) The Union's July 19 increased wage proposal also included changes to other economic terms and conditions such as minimum-call pay, shift differential, and overtime. Id. PSAV completely rejected the Union's tier-based system and instead proposed simply maintaining an unchanged status quo wage system with each classification having a specific pay range of several dollars an hour, the lowest range being $15-$18 an hour and the highest being $25-$30 an hour. (Tr. 93; Jt. Exh. 6.) PSAV's unchanged wage proposal also maintained its "sole and absolute discretion …" to set wage rates within a classification. Id.

When wages were discussed at the August 18 bargaining session, the Union proposed a new counter-offer that reduced wage rates by $2 per hour across the board and removed some of the proposed overtime pay language. (Jt. Exh. 9.) In response, PSAV failed to move off their status quo wage proposal and refused to compromise at all, stating that the Union's proposal was not consistent with PSAV's business model. (Tr. 93, 97.) Once again, it was at these August 17 and 18 sessions that Shankman for PSAV made a number of assertions regarding why PSAV was unable to pay what the Union was putting forth which ultimately led to the Union's September 2 information request. (Jt. Exh. 10.)

After already making two unanswered wage counterproposals and as the Union waited for the requested financial information from PSAV to gauge the veracity of Shankman's August 17 statements reduced to the Union's September 2 information request, PSAV continued to provide proposals after the August 18 session which made no material movement on economics, simply maintaining its initial unchanged status quo wage proposal and unilateral discretion within the classification wage ranges. (Tr. 113; Jt. Exhs. 11, 14, and 17.) In addition, unchanged throughout, PSAV also proposed retaining the pre-existing company practices which apply to all union and nonunion employees with respect to benefits. (See, e.g., Jt. Exh 6 at Art. XVII.)

2. PSAV's Unchanged Non-Economic Provisions

(a.) Discipline and Discharge Provision

As stated above, the Union's initial counter-proposal in June to PSAV included a progressive discipline system and required that PSAV have "just cause" for discipline and discharge. (Tr. 81; Jt. Exh. 3.) PSAV responded by rejecting any "just cause" standard and, like all other subjects, simply proposed to maintain the status quo, rejecting both the progressive discipline system and "just cause" provision. (Tr. 94; Jt. Exh. 6.) The Union proposed a

compromise in August which added a list of misconduct that would constitute grounds for immediate termination, but PSAV once again stubbornly maintained its status quo for this provision both at the August and September sessions. (Tr. 96–97, 108; Jt. Exh. 8.) Even when PSAV finally made a change to its disciplinary proposal later in January 2017, it was not a substantive change as PSAV retained unilateral discretion. (Tr. 113; Jt. Exh. 17.)

(b.) Grievance and Arbitration Provision

PSAV also proposed a grievance and arbitration policy that placed numerous limitations on what could be grieved, excluding "any complaints related to … [a]ny discipline that does not involve the loss of time or pay; …[a]ny employee grievance where there is no personal relief to the grievant; … [a]llegations of discrimination …; …[u]nfair labor practice charge[s]." (Jt. Exh 6. at Art. XIX.) PSAV also rejected the Union's proposal for a "final and binding" arbitration. Id. While PSAV appeared willing to consider arbitration, it rejected final and binding arbitration. (Tr. 108; Jt. Exhs. 11, 14, and 17.)

(c.) Management-Rights Provision

PSAV also refused to move from its initial proposal to maintain an expansive management rights clause as part of its initial proposal to the Union in August. (Tr. 149; Compare Jt. Exhs 5-6 with Jt. Exh. 11 at Art. II, with Jt. Exh. 14 at Art. II, and Jt. Exh. 17 at Art. II.) Under this proposal, PSAV would retain the sole right to determine terms and conditions of employment such as discipline and subcontracting.

L. THE PHILADELPHIA UNION ORGANIZING CAMPAIGN IN FEBRUARY 2017

Respondent employee, Phillip M. Effinger (Effinger), in Philadelphia, asserted at hearing that an election was held on February 17, 2017, to certify IATSE- Local 8, as the sole bargaining representative on behalf of PSAV bargaining unit technician employees in the Philadelphia region.[15] (Tr. 59.)

As a result of the union organizing drive, on February 16, 2017, before the vote, PSAV held a mandatory meeting in Philadelphia with 60 or so technician employees, during which upper management of PSAV spoke. (Tr. 59–60.) PSAV's CEO McIlwain spoke as well and presented a PowerPoint presentation to employees, which made the statement that, "Collective bargaining does not always result in an agreement …. PSAV will not enter into an agreement that would negatively impact our business model." (R. Exh. 3 at 10.)

In his oral presentation, McIlwain further painted "a dismal picture of what was going on with [PSAV's] negotiations [with the Union] in Seattle." (Tr. 59–60.) McIlwain stated that "things aren't going well with the negotiations in Seattle, so they could very well go the same way in Philadelphia," and referenced the negotiations being "drag[ged] out and nothing happening." Id. Effinger opined that CEO McIlwain was trying to get the Philadelphia

[15] PSAV's Human Relations vice-president, Kellie Russell (Russell), corroborated the existence of such a union organizing drive involving PSAV and Local 8.

technicians to use the Seattle stalemate as a warning and that they should vote "no" in the next day's representative election.[16] (Tr. 62–64.)

On February 17, 2017, the Union filed an amended unfair labor charge in Case 19-CA–192068 alleging Respondent continued to fail to bargain in good faith with the Union in violation of Section 8(a)(5) and (1) of the Act.

ANALYSIS

A. Credibility

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, and the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, 335 NLRB at 622. My credibility findings are generally incorporated into the findings of fact set forth above.

B. PSAV Has a Duty to Provide the Union with Its Requested Information That Is Necessary and Relevant to the Union's Performance of Its Duties as Union Representative

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act when Respondent refused to provide the Union the September 2, 2016 requested financial information.

1. The Duty to Provide Relevant and Necessary Information After a Claim of Financial Inability Is Made

An employer violates Section 8(a)(5) of the Act by refusing to provide the collective-bargaining representative of its employees with requested information to substantiate a claim that it cannot afford to agree to bargaining demands. *NLRB v. Truitt Mfg. Co.,* 351 U.S. 149 (1956). The predicate for this doctrine is, as stated by the Supreme Court: ''Good-faith bargaining . . . requires that claims made by either bargainer should be honest claims.'' (Id. at 152.)

A claim of financial inability to pay is not the same as a claim of competitive disadvantage. In the former instance the employer claims it cannot pay and in the latter simply asserts it will not pay. *Nielsen Lithographing Co.,* 305 NLRB 697, 700 (1991), affd. sub nom. *Graphic Communications Local 50B v. NLRB*, 977 F.2d 1169 (7th Cir. 1992). An unwillingness to pay does not trigger an employer obligation to turn over financial records. Claims of economic hardship and business losses can reasonably convey "a present inability to pay" and "must be

[16] This impression is also confirmed by looking to the PowerPoint presentation itself from January 26th, where Respondent on its Slide entitled "We are PSAV" included a bullet point stating "Please Vote 'No' on Friday." R. Exh

evaluated in the context of the particular circumstances [of the] case." *Lakeland Bus Lines, Inc.,* 335 NLRB 322 (2001), citing *Nielsen Lithographing Co,* supra, and *Shell Co.,* 313 NLRB 133 (1993). "'Inability to pay' means that the company presently has insufficient assets to pay or that it would have insufficient assets to pay during the life of the contract that is being negotiated." *AMF Trucking & Warehouse, Inc*., 342 NLRB 1125, 1126 (2004).

In the instant matter, Respondent's chief negotiator, Shankman, vehemently expressed during August 17 negotiations that Respondent could not afford to pay the Union's increased wage proposals and that acceding to the increased wage rates would cause Respondent to lose hotel property clients and go "underwater" or become bankrupt or insolvent as it would "be suicide" for Respondent to agree to pay the Union's increased wage proposals.

Respondent argues that it intended to say that Respondent "would not pay" the increased wage rates proposed by the Union because the Union was mixing apples with oranges and confusing the different type of technician work the Respondent had in Seattle versus SF and SD. I find that the Union's increased wage rates are not unreasonable, illogical, or submitted in bad faith as Respondent argues as the Union's proposed increased wage rates ranged from $33 to $45 for a variety of classifications as compared to what PSAV pays in SF and SD technicians' wage rates in 2016 and 2015 respectively, ranging from $32.88 to $93.58 in SF and $26.89 to $39.21 in SD. The Union also sought financial information from the Respondent tied to Seattle wages paid by PSAV to contractors. Moreover, at no time prior to the hearing did Shankman or Respondent provide the Union with the Respondent's SD or SF CBAs or supply the Union with the requested wages paid in Seattle by PSAV to contractors to explain or clarify to the Union Shankman's distinction in wage rates paid by PSAV to the International Union's members working on an intermittent hiring hall dispatch labor basis and the unit employees here who work as billable and non-billable employees.[17] (See Tr. 29, 31–32, 34, 90–91; R. Exhs. 9–11 and 13.)

I find that these August 17 Shankman statements convey an inability to pay the Union's increased wage proposal under the unique circumstances of this case especially where here the Respondent comes in as a recidivist employer having previously failed and refused to recognize and bargain with the Union from January 4 to May 23, 2016. See the *First PSAV case*, 365 NLRB No. 84, at slip op. 3. As a result, Respondent started out in the negative when considering factors or events to the totality of circumstances analysis of Respondent's conduct from November 2015 when the Union won its election through at least October 11 when the Respondent continued to fail to furnish the Union with the requested financial information. I find that making no substantial movement in economical and noneconomical provisions during bargaining sessions to maintain the status quo is Respondent's chosen business model when one looks at the totality of circumstances.

I further find that beginning 20 days after uttering his inability to pay message to the Union and continuing PSAV's refusal to furnish the requested information, Attorney Shankman

[17] I also reject Shankman's sole testimony that PSAV informed the Union at an August bargaining session that Shankman referred Treneer to speak with Bill Gearns of the international union to better understand PSAV and its business. See Tr. 187–189. Shankman's September 6 email response makes no reference to these alleged facts and no other testimony from any of the other 6 witnesses at the August 17 and 18 bargaining sessions confirm Shankman's statements.

disingenuously and in bad-faith attempts to put forth his semantical twist and denies making any such inability to pay statement as applied *specifically to Respondent* rather than to *all employers* in the same industry. (Jt. Exh. 10.) (Emphasis added.) Consequently, from on and after September 6, PSAV's Shankman's inability to pay statements morphed to become the more vague statement that no employer in this business would pay such an increased wage rate to its union employees that is so grossly outside of its business model. Id. Notably, however, Shankman never retracted or pulled back any of his other August 17 assertions made in support of his earlier inability to pay statement such as his statement that PSAV paid 50 percent commissions to its Seattle hotel and convention center clients and that the Seattle market could not support the Union's proposed increased wage rates. This incongruity of statements from Shankman as to PSAV's true financial status is further evidence causing me to doubt the veracity of Respondent's changing positions.

The Board has repeatedly held that where, as here, an employer predicates its bargaining position as a matter of necessity by reason of current alleged financial losses or pending bankruptcy, the bargaining union is entitled, on request, to information pertaining to the alleged losses and their impact on the employer's business. The employer violates its bargaining obligation by failing or refusing to provide such information, notwithstanding an express disclaimer that it is pleading inability to pay, where the thrust of the employer's position indicates otherwise. The employer's entire course of conduct should be examined to determine whether the retraction or disclaimer "rings hollow." See *Shell Co*., 313 NLRB 133–134 (1993); *Int'l Chemical Workers Union v. NLRB,* 467 F.3d 742 (9th Cir. 2006); *Continental Winding Co*., 305 NLRB 122, 125 (1991); *Facet Enterprises*, 290 NLRB 152, 153 (1988), enfd. 907 F.2d 963, 979–981 (10th Cir. 1990); *Clemson Bros*., 290 NLRB 944 (1988); and *C-B Buick, Inc*., 206 NLRB 6, 7–8 (1973), enfd. in rel. part. 506 F.2d 1086 (3d Cir. 1974). .

Respondent argues that where an employer makes clear that it is not pleading inability to pay or if an employer retracts its earlier claimed inability to pay, the Board will not require the employer to open its books to the union. In this regard, Respondent cites *Coupled Products, LLC*, 359 NLRB 1443, 1453 (2013)[18]; *Media General Operations, Inc*., 345 NLRB 195, 198 (2005); and *American Polystyrene Corp*., 341 NLRB 508, 509 (2004), reversed in full *Int'l Chemical Workers Union v. NLRB,* 467 F.3d 742 (9th Cir. 2006)[19]. These cases are inapposite for the reasons noted in footnotes 18 and 19 below and for the following reasons.

In *Coupled Products*, the Board found that, unlike here, the employer never claimed an inability to pay the union's demands but, instead, the employer consistently told the union that in order to be "competitive" it needed a pay reduction. *Coupled Products*, supra at 1452–1453. In

[18] This case is not proper precedent as on June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning,* 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid which invalidated this case.

[19] The General Counsel and Respondent leave out the proper citation indicating that the Ninth Circuit Court of Appeals, the circuit court where the instant proceeding arises, reversed the Board on June 30, 2006, granting the Union's petition to review and remanding the case to the Board with directions to reinstate the ALJ's January 24, 2003 Decision and Order. *International Chemical Workers Union v. NLRB*, 467 F.3d 742 (2006). I admonish both parties' counsel here as it is it bad form to omit either "convenient" or "inconvenient" case reversals from closing briefs.

Media General Operations, the Board held that an "inability to pay" statement can be retracted under certain conditions not present in this case. The Board in *Media General Operations* goes on to hold:

> "It may well be that an employer cannot make a clear claim of inability to pay and then say 'disingenuously or in bad faith' that it never made such a claim. [citing] *Lakeland Bus Lines v. NLRB*, 347 F.3d [955,]at 964 [(D.C. Cir. 2003)]. However, the Respondent here made a claim that, at worst, could be interpreted as a claim of inability to pay and then clarified that this was not its claim.

Id. at 198. The Board further affirmed the ALJ in *Media General Operations* who found that the employer's statement that it was unable to pay was not made in bad faith but was taken out of context and meant that employer was losing money, not that it had insufficient assets to pay the bonus.

In this case, examining the Respondent's entire course of conduct here as stated above, I further find that PSAV's attempt to retract Shankman's clear inability to pay statements was made disingenuously and in bad faith as part of PSAV's semantical game consistent with its past unlawful refusal to bargain conduct in *the First PSAV case.* PSAV did not retract its pending insolvency painting its upcoming source of funds as being doubtful and unreliable. (Tr. 31-32, 34, 90-91, 151, 153.) Moreover, I further find that PSAV's business strategy all along from November 2015 through at least October 11, 2016, was to maintain its prior nonunion status quo for as long as possible even after the Union won its election in November 2015.

Accordingly, I conclude that Respondent claimed financial inability to pay for the Union's proposed increased wages during its collective bargaining with the Union, and violated Sections 8(a)(5) and (1) of the Act by refusing to furnish since September 6 the requested financial information to the Union.

2. Alternatively, the Union's Bullet Point Items 1-4 Are Relevant and Necessary to the Union's Representative Duties and Respondent's Refusal to Produce this Information Is Further Bad Faith Conduct.

An employer has a duty to furnish a union representing its employees with requested information that is relevant and necessary to the union's performance of its duties as the collective-bargaining representative, including contract negotiations, contract administration, grievance adjustment, and other representational duties. *NLRB v. Acme Indust. Co.*, 385 U.S. 432, 435–436 (1967); *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). Accord *Centura Health St. Mary-Corwin Med. Ctr.*, 360 NLRB 689 (2014). Because the duty to furnish information is meant to further the union's ability to represent the bargaining unit, information pertaining to unit employees' terms and conditions of employment, such as their wages and hours of work, is presumptively relevant to the union, and the burden is on the employer to rebut the relevance of the information requested. *Bacardi Corp.*, 296 NLRB 1220, 1223 (1989). See also *Ohio Power Co.*, 216 NLRB 987, 991 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976).

By contrast, information concerning extra or nonunit employees is not presumptively relevant; rather, relevance must be shown by the requesting party. *Shoppers Food Warehouse Corp.*, 315 NLRB 257, 259 (1994). The burden to show relevance, however, is "not exceptionally heavy," *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983); "[t]he Board uses a broad, discovery-type standard in determining relevance in information requests." *Shoppers Food Warehouse*, supra at 259.

Notably, once the burden of showing the relevance of nonunit information is satisfied, the duty to provide the information is the same as it is with presumptively relevant unit information. Depending on the circumstances and reasons for the union's interest, information that is not presumptively relevant may have "an even more fundamental relevance than that considered presumptively relevant." *Prudential Insurance Co. of America v. NLRB,* 412 F.2d 77, 84 (2d Cir.), cert. denied 396 U.S. 928 (1969). "[A]n employer's duty to bargain includes a general duty to provide information needed by the bargaining representative to assess claims made by the employer relevant to contract negotiations." *Caldwell Mfg. Co.,* 346 NLRB 1159, 1159–1160 (2006).

This follows from the Supreme Court-approved understanding that under the Act "[g]ood-faith bargaining necessarily requires that claims made by either bargainer should be honest claims. . . . If such an argument is important enough to present in the give and take of bargaining, it is important enough to require some sort of proof of its accuracy." *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152–153 (1956). As the Supreme Court explained in *Truitt,* relying on principles adhered to since the earliest years of the Act, when a party asserts its positions without permitting proof or independent verification, "[t]his is not collective bargaining." 351 U.S. at 153 (quoting *Pioneer Pearl Button Co.*, 1 NLRB 837, 842–843 (1936)).

The failure to provide requested relevant information is a violation of Section 8(a)(5) of the Act. Like a flat refusal to bargain, "[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act" without regard to the employer's subjective good or bad faith. *Piggly Wiggly Midwest, LLC*, 357 NLRB 2344, 2355 (2012); *Brooklyn Union Gas Co.,* 220 NLRB 189, 191 (1975)*; Procter & Gamble Mfg. Co.,* 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979).

Here, the minimal burden the Union would be required to carry to establish the relevance of the information requested from PSAV, again, was outlined in its September 2 email. In this communication, the Union detailed item by item how the requested information would enable to the Union to better understand and evaluate PSAV's financial concerns for paying Union technician bargaining unit employees' proposed higher wages. Moreover, the Union requested this specific financial information from PSAV because of the direct relationship between the assertions made by Shankman at the bargaining table on August 17 about PSAV's financial position, the terms and nature of its contractual relationship with its clients, and the wage rates that PSAV in Seattle could or could not sustain based upon the rates PSAV charged. (Tr. 35, 99–101.)

I further find that starting at the August 17 bargaining session, it was unclear to the Union what the Respondent was really saying when Shankman's words equated to PSAV's "inability to pay" the Union's proposed increased wages. All that the Shankman and Respondent told the Union was that the Union's July 19 and August 18 proposed increased wages did not fit Respondent's business model and the Respondent asserted why this was referencing the same 4 bullet points that became the Union's September 2 request for financial information. As a result, these 4 bullet point assertions by the Respondent is all the Union had to go on to get more information so it was not continuing to be the only party at the bargaining table proposing a change to the status quo. Even if the Respondent was arguing the "status quo" had to be, PSAV's 4 assertions backing that up were the only way the Union could move forward.

Also in the present case, Respondent has completely refused to respond to the Union's August 17 and September 2 information requests. Respondent argues that it never claimed "inability to pay" and therefore the duty to provide information was never triggered. The Respondent's arguments (R Br. at 11–14) to the contrary are unavailing. Viewing Respondent's September 6 email response to the Union's request for information, the Respondent contends that the financial data sought in the requested financial documents is irrelevant because it "is premised off your inability to pay claim …." (Jt. Exh. 10.) Even more fundamentally incorrect is the Respondent's contention (R. Br. at 13) that the Union's request for the financial documents comprised in its September 2 four bullet points "is clearly the type of general financial information that even the decision in *Caldwell* would not have required be provided." The Respondent's contention is incorrect.

Respondent's assertions regarding "inability to pay" fall short. The Board in *Caldwell Mfg. Co.,* 346 NLRB 1159, 1160 (2006), openly rejected the notion that only assertions of "inability to pay" will trigger a duty to disclose information. The Board instead held that "when there has been a showing of relevance, the Board has consistently found a duty to provide information such as competitor data, labor costs, production costs, restructuring studies, *income statements*, and wage rates for nonunit employees." (Emphasis added.) See also *General Counsel Advice Memorandum in Rotek, Inc.* Cases 08-CA-099704 et. al. (Nov. 26, 2013)(Same).

In *Caldwell*, the Board specifically held that "the General Counsel established that the information was relevant, because it would have assisted the Charging Party in assessing the accuracy of the Respondent's proposals and developing its own counterproposals. The record evidence demonstrates that the Charging Party's requests were made directly in response to specific factual assertions made by the Respondent in the course of bargaining." (Id.) A similar result was reached in *KLB Industries, Inc. v. NLRB*, 700 F.3d 551 (D.C. Cir. 2012), wherein the company sought wage concessions on the basis of competitive pressures it claimed to be facing. In *KLB,* the court reaffirmed the Board's holding that when the company relied on competitive pressures to justify wage concessions it "made the veracity of that claim relevant to the negotiations." (Id. at 557.) The reasoning and rationale of *Caldwell* and *KLB* is particularly applicable to the facts of this case and directly address the very questions presented.

The information requests at issue is a request for information in order to prepare for first-contract bargaining. All of the outstanding information requested by the Union (its four bullet points) is relevant information as it is necessary information needed by the bargaining

representative to assess claims made by the employer relevant to contract negotiations. See *Caldwell Mfg. Co.,* 346 NLRB 1159, 1159–1160. Respondent has failed to rebut the discovery-like relevance standard in play here.

Here too, the requested information is relevant because it will assist the Union in assessing the accuracy of the Respondent's August 17 bargaining statements and proposals and for developing the Union's own counterproposals. The Respondent must concede that its claim that PSAV was unable to pay the Union's increased wages was an important one; not only relevant but a central premise for the bargaining negotiations. It was a claim supported by Shankman's statements that PSAV's current contracts with its hotel and convention center clients in the Seattle area were precarious and unreliable and that PSAV does not allow these higher wages and that if untrue, or if not the whole story, could have significant ramifications for the negotiations. Given this, it is simply inconsistent with the Act for the Union to be required to take Shankman's word on this important matter that the requested financial records are too general or not relevant here. The documents to verify this claim were requested and should have been provided.

The preponderance of the evidence shows that Respondent specifically told the Union that Respondent was unable to pay the Union's proposal to increase wages and did not fully explain any misunderstanding between the parties until the hearing in this case. Moreover, the Respondent firmly held onto its status quo positions from May 24, 2016 through February 17, 2017 without any material compromises offered to the Union. By the time of hearing, it was too late to retract Respondent's prior "inability to pay" statements and this combined with Respondent's condescending and dismissive attitude toward the Union and its prior bad faith conduct from January 4 through May 23, 2016, provide special circumstances for Respondent to produce the requested financial information.

As a result, I further find that the General Counsel has demonstrated that this four bullet pointed requested information was relevant and necessary to the bargaining with PSAV under a liberal discovery standard. I further find that the Respondent was under a duty to supply the Union with the financial documents upon the Union's four bullet point request. To the extent none of the four categories of financial documents have been provided, the Respondent has unlawfully failed to provide it upon the Union's request in violation of Section 8(a)(5) and (1) of the Act..

Respondent also argues that the Union acted in bad faith here and that PSAV should receive a pass because of this. I find that if the Respondent really believed that the Union was acting in bad faith, it could have filed its own unfair labor practice claim. Since it did not and given Shankman's other less than credible and rejected assertions, I further find that PSAV's argument that the Union somehow acted unlawfully is unsupported by the evidence and lacks merit. Lastly, PSAV argues that the requested financial information is proprietary and confidential. However, if PSAV was concerned about the confidentiality of the information, it was obligated to propose and bargain over a reasonable accommodation, such as redacting the information and/or restricting its use. The burden is on the employer not the union to propose a precise option to providing the information. See *A-1 Door &Building Solutions,* 356 NLRB 499, 500–501 (2011); and *Borgess Medical Center*, 342 NLRB 1105, 1106 (2004). See also *U.S.*

Testing Co. v. NLRB, 160 F.3d 14, 20–21 (D.C. Cir. 1998), and cases cited there. There is no evidence that PSAV ever did so.

By the August 17 oral request and September 2 email, the Union requested that PSAV furnish the Union with information that is relevant and necessary to the Union's performance of its duties as the exclusive collective–bargaining representative of the unit. Since about September 6, 2016, the Respondent has failed and refused to furnish the Union with the requested information. Accordingly, I find that PSAV's refusal to provide the Union with the requested financial information violated Section 8(a)(5) and (1) of the Act, as alleged.

C. The Totality of PSAV's Conduct Shows a Lack of Good Faith Bargaining

Section 8(d) of the Act defines the obligation of employers to bargain collectively as the "obligation … to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment." The obligation to bargain in good faith "does not compel either party to agree to a proposal or require the making of a concession." A party who enters into negotiations with a pre-determined resolve not to budge from an initial position, however, demonstrates "an attitude inconsistent with good-faith bargaining." *Gen. Elec. Co*., 150 NLRB 192, 196 (1964*)*, *enfd.*, 418 F.2d 7736 (2d Cir. 1969), *discussed in Am. Meat Packing Co*., 301 NLRB 835 (1991). Nevertheless, the Board considers the context of the employer's total conduct in deciding "'whether the employer is engaging in hard but lawful bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of arriving at any agreement.'" *Pub. Serv. Co. of Okla.*, 334 NLRB 487 (2001) (quoting *Atlanta Hilton & Tower*, 271 NLRB 1600, 1603 (1984)), *enfd.*, 318 F.3d 1173 (10th Cir. 2003).

In determining whether the employer bargained in good faith, the Board may not "sit in judgment upon the substantive terms of collective bargaining agreements." *NLRB v. Am. Nat'l Ins. Co*., 343 U.S. 395, 404 (1952). However, in determining good faith, the Board should examine the totality of the circumstances, including the substantive terms of proposals. *Pub. Serv.*, 334 NLRB at 488; *see also Borden, Inc. v. NLRB*, 19 F.3d 502, 512 (10th Cir. 1994) (noting also that "rigid adherence to disadvantageous proposals may provide a basis for inferring bad faith"); *Colorado-Ute Elec. Ass'n v. NLRB*, 939 F.2d 1392, 1405 (10th Cir. 1991)(recognizing the same). "Sometimes, especially if the parties are sophisticated, the only indicia of bad faith may be the proposals advanced and adhered to." *NLRB v. Wright Motors, Inc*., 603 F.2d 604, 609 (7th Cir. 1979). For example, an employer's predetermined and inflexible position toward union security and merit increases has helped to support a finding of surface bargaining. *Duro Fittings Co.*, 121 NLRB 377 (1958). In *Irvington Motors*, 147 NLRB 377 (1964), *enfd.*, 343 F.2d 759 (3d Cir. 1965), the employer violated the Act by engaging in surface bargaining where its offer merely reiterated existing practices and its first written counterproposal was not submitted until 3.5 months after it had been requested. *See also MacMillan Ringerfree Oil Co*., 160 NLRB 877 (1966), *enfmt. denied on other grounds*, 394 F.2d 26 (9th Cir. 1968).

> Although an adamant insistence on a bargaining position is not of itself a refusal to bargain in good faith [citation omitted], other conduct has been held to be indicative of a lack of good faith. Such conduct includes delaying tactics,

> unreasonable bargaining demands, unilateral changes in mandatory subjects of bargaining, efforts to bypass the union, failure to designate an agent with sufficient bargaining authority, withdrawal of already agreed-upon provisions, and arbitrary scheduling of meetings.

Atlanta Hilton & Tower, 271 NLRB 1600, 1603. (Footnote citations omitted.)

In *Stevens International*, 337 NLRB 143, 149–50 (2001), the Board found that the respondent did not engage in good-faith effects bargaining. Although the respondent met with the union and invited it to propose terms for a plant closing agreement, the Board found bad faith bargaining because the respondent summarily rejected the union's proposal without offering a counterproposal and failed to negotiate further, despite the union's offer to modify its proposal. *See also Dallas & Mavis Specialized Carrier Co*., 346 NLRB 253, 257 (2006) (finding no good-faith bargaining where the respondent listened and responded to the union's proposal regarding the effects of ceasing operations but then summarily rejected all but one of the union's proposals without providing an explanation or counterproposal, and did not respond when the union requested further bargaining).

The complaint also alleges that Respondent violated Section 8(a)(5) and (1) of the Act at various times from January 4, 2016 through February 22, 2017, when Respondent engaged in surface bargaining to frustrate or avoid mutual agreement by: (1) refusing to recognize and bargain with the Union causing delay in providing bargaining proposals from January 4 through May 23, 2016; (2) failing and refusing to furnish the Union with financial information since September 6, 2016; (3) failing to offer concrete and meaningful bargaining proposals to the Union on matters relating to wages and benefits, grievances and arbitration, just-cause protections from discipline or discharge, and an overly broad management rights clause that were either statutorily required or were heavily tipped to Respondent as part of its status quo ante position; and (4) bypassing the Union with an October 13 letter to employees and by informing Respondent employees in Philadelphia that it would be futile to elect a union when bargaining in Seattle had been at a stalemate. (GC Exh. 1(g) at 2–3.)

The General Counsel asserts that Respondent violated Section 8(a)(5) by coming to the bargaining table "with no intention of reaching an agreement, and it was simply continuing down its well-established path of refusing to recognize and bargain with the Union." (GC. Br., at 30.) While the duties imposed under Section 8(a)(5) of the Act do not obligate a party to make concessions or yield a position fairly maintained, it does require a serious intent to adjust differences and to reach an acceptable common ground, rather than merely going through the motions of bargaining. *Unbelievable, Inc. d/b/a Frontier Hotel & Casino*, 318 NLRB 857, 876 (1995), enfd. 118 F.3d 795 (D.C. Cir. 1997). Thus, negotiating as a kind of "sham" while intending to avoid an agreement amounts to bad faith bargaining in violation of Section 8(a)(5) of the Act and if a party to the bargaining process is unwilling to make any meaningful modifications of its principal proposals, in effect it is maintaining "an attitude of 'take it or leave it'" which the U.S. Supreme Court in the *NLRB v. Insurance Agents' International Union, AFL-CIO [Prudential Insurance Company of America]*, 361 U.S. 477, 485 (1960), case condemned. *K Mart Corporation*, 242 NLRB 855, 875 (1979).

Applying these principles here, I find that the totality of Respondent's conduct amounted to bad faith bargaining as Respondent, among other things referenced herein, at all times from May 24, 2016 through February 22, 2017, refused to move past its initial status quo bargaining offer with the Union. Viewed in its entirety, the evidence shows that Respondent pursued tactics designed to delay and prolong negotiations while at the same time trying to undermine support for the Union.

1. Delay in providing meaningful bargaining proposals.

As stated above, surface bargaining can be found where it is manifestly detrimental to the Union's preservation of employee support to delay the submission of proposals. *J.P. Stevens & Co., Inc.*, 239 NLRB 738, 765 (1978), enfd. in pert. part 623 F. 2d 322 (4th Cir. 1980). Thus, Respondent's delay in presenting meaningful counterproposals is a factor I have considered in finding bad faith. See *United Technologies Corp*., 296 NLRB 571 (1989)(Board found bad faith bargaining where employer's failure to make an economic proposal after almost one year of bargaining found to be part of a pattern of delaying tactics).

First of all, the Board ruled in May 2017 that PSAV unlawfully failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit from January 4 through May 23, 2016. *The First PSAV case* at slip. op pp. 2-3. As a result, I take administrative notice that PSAV's past conduct involves its unlawful delay of bargaining with the Union here so, at stated above, PSAV comes before me here as a recidivist employer with a history of bad faith bargaining with this Union. See *Langston Companies***,** 304 NLRB 1022 (1991)(Past conduct by an employer's president that occurred preelection used as a factor in a surface bargaining finding by the Board); see also *Unbelievable, Inc. d/b/a Frontier Hotel & Casino*, 318 NLRB supra at 857)(Same).

At the initial bargaining session on June 24, PSAV turned over its current wage information which has remained the status quo wages offered by PSAV with no change. Also on June 24, the Union presented its proposal for a first contract which was based on the Union typical scaffold agreement with no wage provisions yet and contained many different provisions from PSAV's employee handbook rules. On July 19, the Union provided PSAV its first wage proposal with its revised CBA proposal. On August 11, PSAV provided the Union with a proposed CBA that contained the status quo wages and benefits for unit employees. On August 18, the Union provided another counterproposal to PSAV with wage rate concessions from its July 19 proposal.

After making two unanswered wage counterproposals and as the Union waited for the September 2 requested financial information from PSAV to gauge the veracity of Shankman's August 17 statements as reduced to the Union's September 2 information request, PSAV continued to provide proposals after the August 18 session which made no material movement on economics, simply maintaining its initial unchanged status quo wage proposal and unilateral discretion within the classification wage ranges. (Tr. 113; Jt. Exhs. 11, 14, and 17.) In addition, as discussed below, PSAV also proposed retaining the pre-existing company practices which apply to all union and non-union employees with respect to benefits. (See, e.g., Jt. Exh 6 at Art. XVII; Jt. Exh. 17 at Art. IX.)

I find it significant that by January 27, 2017, Respondent did not present any counterproposals on any key economic issues. Instead, it simply "rejected" the Union's proposals without sufficient explanation and said that anything outside the status quo wages would negatively impact PSAV's "business model." However, Respondent did not present any departure from the status quo wage proposal at any time through January 27, 2017 over more than 7 months of negotiations after receiving the Union's initial proposals in June 2016. In *Bewley Mills*, 111 NLRB 830, 831 (1955), the Board found a delay of "almost 7 weeks" in submitting counterproposals to be a factor indicative of bad faith. And in *J.P. Stevens & Co., Inc.*, 239 NLRB supra at 765, the Board noted that when "an employer takes 6 months or a year just to submit proposals, it can reasonably foresee the erosive effect . . . on a union's strength among the employee population . . . [and] strongly suggests that such an effect was deemed desirable." Given the circumstances of this case where more an a year from January 4, 2016 through at least January 27, 2017, the specific unwillingness of Respondent to bargain regarding the above economic provisions and the provisions referenced below, and the unique history of Respondent's unlawful conduct against the Union, I find Respondent's dilatory tactics on presenting its initial counterproposals on the key economic provisions of wages and benefits is evidence of its bad faith.

In sum, I find that Respondent's bad faith was independently demonstrated by the totality of its conduct throughout negotiations with the Union. Specifically, Respondent negotiated with a predetermined rigid resolve not to budge from an initial status quo position. Respondent maintained throughout its original unchanged positions as to the key economic provisions involving wages and benefits. In these special circumstances, under which the Union typically obtains wage and benefits increases in its first CBA, I find Respondent's rigid "take-it-or-leave-it" position on wages and benefits was put forth in bad faith in an attempt to delay or frustrate bargaining.

2. Respondent Never Put Forth Any Meaningful Proposals that Significantly Changed from Its Initial Status Quo Position on Non-Economic Provisions

a. Bargaining Regarding discipline and discharge provisions

As stated above, the Union's initial counterproposal in June to PSAV included a progressive discipline system and required that PSAV have "just cause" for discipline and discharge. (Tr. 81; Jt. Exh. 3.) PSAV responded by rejecting any "just cause" standard and, like all other subjects, simply proposed to maintain the status quo, rejecting both the progressive discipline system and "just cause" provision. (Tr. 94; Jt. Exh. 6.) The Union proposed a compromise in August which added a list of misconduct that would constitute grounds for immediate termination, but PSAV once again stubbornly maintained its status quo for this provision both at the August and September sessions. (Tr. 96-97, 108; Jt. Exh. 8.) Even when PSAV finally made a change to its disciplinary proposal later in January 2017, it was not a substantive change as PSAV retained unilateral discretion. (Tr. 113-114; Jt. Exh. 17.)

I find that Respondent failed to act in good faith when it negotiated the discipline and discharge provisions with the Union. Meanwhile, during this same timeframe, Respondent was

encouraging PSAV's technician employees in Philadelphia to vote "no" to unionization using PSAV's deliberately-created Seattle stalemate as an explanation why it would be futile for Philadelphia employees to vote in a union and encouraging these employees to not join a union. Thus, I find that throughout negotiations, Respondent maintained a "take-it-or-leave it" attitude intending to deliberately draw out negotiations in hope the certification period would lapse or that the delay could get communicated by PSAV to other PSAV technicians in other regions as an example why unionizing would not benefit them.

b. Respondent's position on grievance and arbitration provision

PSAV also proposed a grievance and arbitration policy that placed numerous limitations on what could be grieved, excluding "any complaints related to … [a]ny discipline that does not involve the loss of time or pay; …[a]ny employee grievance where there is no personal relief to the grievant; … [a]llegations of discrimination …; …[u]nfair labor practice charge[s]." (Jt. Exh 6. at Art. XIX.) PSAV also rejected the Union's proposal for a "final and binding" arbitration. Id. While PSAV appeared willing to consider arbitration, it rejected final and binding arbitration. (Tr. 108, 111-112; Jt. Exhs. 11, 14, and 17.)

As further evidence of bad faith, I find that Respondent's refusal to veer from its status quo language on grievance and arbitration proposals was intended to either purposely delay bargaining while a certification lapsed, to use as an example in Philadelphia and anywhere else a union vote was approaching to bad-mouth the Union in Seattle, or were otherwise advanced to "make concessions here and there . . . to conceal a purposeful strategy to make bargaining futile or fail." See *NLRB v. Herman Sausage Co.*, 122 NLRB 168 (1958) enfd. 275 F.2d 229, 232 (5th Cir. 1960)(Board found as evidence of bad faith against employer, its unwillingness to accept or consider any contract other than its proposed contract).

c. Respondent's management rights provision

PSAV also refused to move from its initial proposal to maintain an expansive management rights clause as part of its initial proposal to the Union in August. (Tr. 149; Compare Jt. Exhs 5-6 with Jt. Exh. 11 at Art. II, with Jt. Exh. 14 at Art. II, and Jt. Exh. 17 at Art. II.) Under this proposal, PSAV would retain the sole right to determine terms and conditions of employment such as discipline and subcontracting.

Finally, four of the tentative agreements reached between the parties on various provisions involve the *Union's* compromise and agreement to withdraw proposals that would have changed the Respondent's status quo provisions while others merely incorporated into the CBA rights that employees were granted through statute. See Jt. Exh. 17 at 30.

I find that Respondent failed to act in good faith when it negotiated the management-rights provision with the Union. In summary, I find that PSAV acted unreasonably extreme or harsh with all of its proposals which I find to be further evidence that PSAV was offering them lacking serious intent to compromise with the Union and this is further proof of PSAV's failure to bargain in good faith because PSAV failed to budge from its status quo positions

3. Respondent's Bypassing the Union with Its October 13 Letter and CEO McIlwain's February 2017 Statements to Philadelphia Employees Are Further Evidence of Respondent's Lack of Good Faith

Shankman sent an October 13 letter to the Union bargaining team but he also sent it to the entire technicians' bargaining unit, which disputes the basis of the Union's wage proposals and explicitly states that PSAV will not agree to the proposals, whether on wages or scheduling, and that PSAV is not "required to deviate from the business model that works throughout the Company." (Tr. 107; Jt. Exh. 13.) I find that this October 13 letter directly to Respondent's technicians' unit, was sent in bad faith by Attorney Shankman as it injures the Union's status as exclusive bargaining representative and PSAV's failure to accord the Union its rightful role in the establishment of new wages, the subject of the letter, necessarily tended to undermine the Union's authority among the employees whose interests it represented. See *C&C Plywood Corp*., 163 NLRB 1022, 1024 (1967)(Real injury from bypassing the union is not flowing from breach of contract but from injury to the union's status as bargaining representative.)

Also as stated above, on February 16, 2017, before a union election vote in Philadelphia, Pennsylvania, PSAV held a mandatory meeting in Philadelphia with 60 or so technician employees, during which PSAV's CEO McIlwain spoke upper management of PSAV spoke and presented a PowerPoint presentation to employees, which made the statement that, "Collective bargaining does not always result in an agreement …. PSAV will not enter into an agreement that would negatively impact our business model." (Tr. 59-60; R. Exh. 3 at 10.) In his oral presentation, McIlwain further painted a dismal picture of what was going on with PSAV's negotiations with the Union in Seattle and McIlwain stated that "things aren't going well with the negotiations in Seattle, so they could very well go the same way in Philadelphia," and referenced the negotiations being "drag[ged] out and nothing happening." Id. I find that CEO McIlwain was trying to get the Philadelphia technicians to use PSAV's bad faith conduct creating the Seattle stalemate as a warning that employees should vote "no" in the next day's representative election and that it would be futile to vote a union in. (Tr. 59-60, 62–64.)

In *Langston Companies***,** 304 NLRB 1022 (1991), the Board considered the employer's president's preelection statements to employees that "it might take 8 to 10 years for [the union] to get a contract" as a threat that, tied to the employer's other actions at the bargaining table, amounted to bad faith bargaining. The president's statements occurred preelection and the Board held that the employer's past conduct reveals surface bargaining. Id. In *Western Summit Flexible Packaging*, 310 NLRB 45 (1993), the Board found that an employer's owner's antiunion statements together with the employer's insistence on a broad management-rights clause and employment-at-will language evidenced the employer's bad faith.

Here, PSAV's CEO McIlwain's PowerPoint presentation, his antiunion message to vote "no" in the election, and his preelection message to Philadelphia employees that it would be futile to vote for the union given the bargaining session stalemate with the Seattle Union employees created by PSAV in bad faith also adds another bad faith bargaining factor as evidence of PSAV's failure to bargain in good faith with the Union.

Based upon the foregoing, the totality of the circumstances show that Respondent engaged in bargaining without a good-faith intent to resolve differences and reach common ground in violation of Section 8(a)(5) and (1) of the Act. [20]

CONCLUSIONS OF LAW

1. The Respondent, Audio Visual Services Group, Inc. d/b/a PSAV Presentation Services, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party International Alliance of Theatrical Stage Employees, Local 15 (Union) is a labor organization with the meaning of Section 2(5) of the Act.

3. At all material times the Union has been the designated exclusive collective-bargaining representative of the following bargaining units of the Respondent's employees:

> All full-time and regular part-time technicians, including entry level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the Union's national agreement with Respondent, and guards and supervisors as defined by the Act.

4. By failing and refusing, since about September 6, 2016, to furnish the Union with the requested information, described above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

5. By failing and refusing to bargain in good faith with the Union from May 24, 2016, through February 22, 2017, the Respondent violated Section 8(a)(5) and (1) of the Act.

6. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

7. I recommend dismissing the complaint allegations that are not addressed in the Conclusions of Law set forth above.

REMEDY

Having found that the Respondent engaged in certain unfair labor practices and has violated Section 8(a)(5) and (1) of the Act, I shall order it to cease and desist, to recognize and

[20] I do not find that any of the individual acts set forth in this section, standing on their own, are unlawful in and of themselves. Instead, Respondent's conduct as a whole, supports a finding that it was not bargaining in overall good faith and therefore constitutes a violation of Section 8(a)(5) and (1) of the Act. See *Universal Fuel, Inc.*, 358 NLRB 1504, 1504 (2012)(Same).

bargain on request with the Union and, to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall provide the Union with the information that it has to date failed and refused to provide that was requested by the Union in its September 2, 2016 information request to the Respondent, as described in this decision.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, I shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union and furnishes the Union with the information that was requested by the Union in its September 2, 2016 information request to the Respondent, as described in this decision. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

The Respondent shall also post the notice in accord with *J. Picini Flooring*, 356 NLRB 11, 15–16 (2010). In accordance with *J. Picini Flooring*, the question as to whether an electronic notice is appropriate should be resolved at the compliance phase. Id. at 13.

In addition, a public reading of my remedial notice is appropriate here. The Respondent's violations of the Act are sufficiently serious and Respondent is a recidivist Act violator that the reading of the notice is necessary to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices, and to enable employees to exercise their Section 7 rights free of coercion. See, e.g., *The Sheraton Anchorage,* 363 NLRB No. 6, slip op. at 2 (2015); *Carey Salt Co*., 360 NLRB 201, 202 (2014); *HTH Corp*., 356 NLRB 1397, 1403 (2011), enfd. 693 F.3d 1051 (9th Cir. 2012); *Homer D. Bronson Co*., 349 NLRB 512, 515 (2007), enfd. mem. 273 Fed. Appx. 32 (2d Cir. 2008). Therefore, I will require that the remedial notice be read aloud to the Respondent's employees at each of Respondent's Seattle Area and Philadelphia facilities by CEO McIlwain (or, if he is no longer employed by the Respondent, the current senior vice president of Human Relations) in the presence of a Board agent or, at the Respondent's option, by a Board agent in that official's presence.

On these findings of fact and conclusions of law and on the entire record, pursuant to Section 10(c) of the Act, I issue the following recommended[21]

ORDER

The Respondent, Audio Visual Services Group, Inc., d/b/a PSAV Presentation Services, doing business in Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington, and Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

[21] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Failing and Refusing to bargain collectively and in good faith with the International Alliance of Theatrical and Stage Employees, Local 15 concerning the wages, hours, and other terms and conditions of employment in the following unit:

> All full-time and regular part-time technicians, including entry level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the Union's national agreement with Respondent, and guards and supervisors as defined by the Act.

(b) Failing and refusing to bargain collectively with the International Alliance of Theatrical and Stage Employees, Local 15, by failing to provide information requested by the Union that is necessary and relevant for the Union's performance of its duties as the collective bargaining representative of the employees in the Unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive collective bargaining representative of the employees in the following appropriate unit on terms and conditions of employment for the period required by *Mar-Jac Poultry*, 136 NLRB 785 (1962),[22] and if an understanding is reached, embody the understanding in a signed agreement.

> All full-time and regular part-time technicians, including entry level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by the Employer at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the Union's national agreement with Respondent, and guards and supervisors as defined by the Act.

(b) Within 14 days, provide the Union with financial information responsive to the 4 bullet points contained in Union's September 2, 2016, information request.

(c) Within 14 days of service by the Region, have its representative read the attached notice to employees during work time, in the presence of a Board Agent. Alternatively, within 14 days of service by the Region, have a Board Agent read the attached notice to employees during work time, in the presence of Respondent's representatives. The attached remedial notice shall be

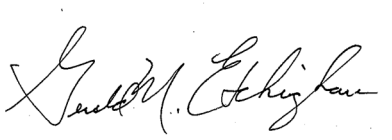
[22] While it is recognized that the Board previously extended the Union's certification year under Mar-Jac Poultry in PSAV Presentation Services, 365 NLRB No. 84 (May 19, 2017), as Respondent has not complied with the Board's Order to bargain in good faith, it is also included in this Order.

read aloud to the Respondent's employees at each of Respondent's Seattle Area and Philadelphia facilities by CEO McIlwain (or, if he is no longer employed by the Respondent, the current senior vice president of Human Relations) in the presence of a Board agent or, at the Respondent's option, by a Board agent in that official's presence.

(d) Within 14 days after service by the Region, post at its Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington, and Philadelphia, Pennsylvania facilities, copies of the attached notice marked Appendix.[23] Copies of the notice, on forms provided by the Regional Director for Region 19 after being signed by the Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., April 6, 2018



Gerald Michael Etchingham
Administrative Law Judge

[23] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading 'Posted by Order of the National Labor Relations Board" shall read 'Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights. International Alliance of Theatrical and Stage Employees, Local 15 (Union) is our employees' representative in dealing with us regarding wages, hours and other working conditions for the following unit (Unit):

> All full-time and regular part-time technicians, including entry-level technicians, senior technicians, lead technicians, driver technicians, concierges, equipment repair QC specialists, technical specialists, and warehouse technicians employed by us at our Seattle, Sea-Tac, Bellevue, Tukwila, and Tacoma, Washington facilities, excluding project managers, riggers, union-referred employees subject to the Union's national agreement with us, and guards and supervisors as defined by the Act.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective bargaining representative of our Unit employees.
WE WILL NOT fail and refuse to provide information requested by the Union that is relevant and necessary to its role as your exclusive collective-bargaining representative.
WE WILL, upon request, bargain in good faith with the Union as your exclusive collective-bargaining representative.
WE WILL, promptly furnish to the Union with the information requested on September 2, 2016, related to bargaining over wages for the years September 1, 2015, to the present.
WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

AUDIO VISUAL SERVICES GROUP, INC., a Delaware Corporation, d/b/a PSAV PRESENTATION SERVICES

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

915 2nd Avenue, Room 2948, Seattle, WA 98174-1078
(206) 220-6300, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/19-CA-186007 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (206) 220-6284.